

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANTS:	Mrs Linda Frimpong Master Henry Kofi Acquah
REPRESENTATIVE:	Mr Tanveer Singh (MARN: 1173217)
CASE NUMBER:	2214403
HOME AFFAIRS REFERENCE(S):	BCC2019/3280217
MEMBER:	Anne Grant
DATE:	26 May 2023
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the applications for Partner (Temporary) (Class UK) visas, with the direction that the first named applicant meets the following criteria for a Subclass 820 (Partner) visa: • cl 820.211(2) of Schedule 2 to the Regulations • cl 820.221(1)(a) of Schedule 2 to the Regulations

Statement made on 26 May 2023 at 9:32am

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine spousal relationship – financial aspects – nature of the household – social aspects – nature of the commitment – decision under review remitted

1.

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), r 1.15A; Schedule 2, cls 820.211, 820.221

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicants Partner (Temporary) (Class UK) visas under s 65 of the *Migration Act 1958* (Cth) (the Act).
2. The first named applicant (the applicant) applied for the visa on 30 June 2019 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl 820.211 because they were not satisfied that the first applicant and sponsor were spouses as defined in s.5F of the Migration Act.
4. The applicants appeared before the Tribunal on 5 May 2023 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor and a witness, Mr Afriyie, a friend of the parties.
5. The applicants were represented in relation to the review. The representative attended the Tribunal hearing.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The issue in the present case is whether the first visa applicant and the sponsor were and are spouses at the time of application and at the time of decision. The second applicant is a dependent child of the first applicant and therefore his application relies on the decision made in relation to the relationship between the first applicant and the sponsor.
8. The visa application was lodged on 30 June 2019. At the time of application, the visa applicant and sponsor provided the following documents to the Department in support of their application:
 - Statutory declaration, dated 2 December 2021 and register of visa applicant's divorce according to Ghana Customary Marriage and Divorce (Registration) Law, dated 8 December 2021;
 - Divorce certificate for the sponsor and his previous spouse, dated 2 December 2002;
 - Sponsor's statutory declarations, dated 10 March 2022, regarding his previous relationships with Miss Victoria Yaa Gyamfuwah and Miss Doula Kinstin;
 - Australian National Police Certificate dated 17 February 2022, confirming there are no disclosable court outcomes against the visa applicant;
 - Ghana criminal check dated 17 February 2022 issued by the Criminal Investigation Department, Ghana, certifying the visa applicant has no criminal record;
 - Australian National Police Certificate dated 17 February 2022, confirming there are no disclosable court outcomes against the sponsor;

- Visa applicant's Ghana passport and birth certificate confirming her date of birth and her Ghana nationality;
 - Ceremonial marriage certificate, showing both parties married at 3 Ascot Court, St Albans, Victoria on 17 March 2019;
 - Witness statutory declaration from Alex Owusu-Afriyie, friend of the sponsor of 30 years, dated 22 February 2022, in support of the relationship;
 - Witness statutory declaration from Godwill Essiam, friend of the visa applicant, dated 25 February 2022, in support of the relationship;
 - Visa applicant's passport and citizenship certificate, confirming his Australian nationality;
 - Sponsor's statutory declaration, outlining various aspects of his relationship with the visa applicant;
 - ANZ bank statement in joint names for account ending 4915 for the period of December 2021 to February 2022;
 - Photographs of both parties depicting their everyday life, spending time with the visa applicant's child (Henry) as a family unit, gatherings with friends for meals and events;
 - Henry's birth certificate and passport, showing he was born on 30 December 2011 to the visa applicant, and his Ghana nationality.
9. On 29 September 2022, the applicants provided the following documents to the Tribunal in support of their application for review:
- Visa applicant's Ghana passport with an expiry date of 12 March 2024;
 - Secondary visa applicant's (Henry) Ghana passport with an expiry date of 12 March 2024.
10. On 25 October 2022, the applicants provided the following documents to the Tribunal in support of their application for review:
- ANZ bank statements in joint names for account ending *145 for the periods of February to April 2019; June to August 2019; October to December 2019; February to April 2020; June to August 2020; August to October 2020; August to October 2022. The statements were addressed to 3 addresses over the period: Ascot Ct, St Albans, Henry St, St Albans, and Clacton St, St Albans;
 - Residential tenancy agreement in joint names for the property at Henry St, St Albans, for the period of March 2020 to March 2021;
 - Residential tenancy agreement in joint names for the property at Clacton Street, St Albans VIC 3021, for the period of April 2021 to April 2022;
11. On 26 April 2023, the applicants provided the following documents to the Tribunal in support of their application for review:
- ANZ bank statements in joint names for account ending *145 for the period of December 2021 to February 2022, sent to their address at Clacton St, St Albans;
 - Carer's certificate issued to the sponsor, listing him as a carer to the visa applicant for the visa applicant's hospital admission on 15 December 2022;
 - Water bills in the visa applicant's name at Henry St, St Albans issued on 2 May 2020; 30 July 2020; 3 November 2020; 4 February 2021;
 - Water bills in the visa applicant's name at Clacton Street, St Albans issued on 5 May 2021; 28 May 2021; 27 August 2021; 24 November 2021; 1 March 2022; 27 May 2022; 23 August 2022; 13 October 2022; 25 November 2022; 25 February 2023;

- Visa applicant's Western Health Sunshine Hospital patient discharge summary, dated 16 December 2022, listing her address at Clacton St, St Albans;
- AGL electricity bills in joint names for the billing period of March to June 2020; June to September 2020; September to October 2020; October to November 2020; November to December 2020; December 2020 to January 2021; January to February 2021; February to March 2021; March to April 2021 at Henry Street, St Albans;
- AGL electricity bills in joint names for the billing period of February to May 2019 November 2019 to February 2020, at Ascot Court, St Albans;
- AGL electricity bills in joint names for the billing period of April to June 2021; June to September 2021; September to December 2021; December 2021 to March 2022; March to June 2022; July to August 2022; June to September 2022; September to December 2022 at Clacton Street, St Albans;
- Email correspondence from second applicant's primary school, addressed to both parties, dated March and April 2023;
- Employment letter from the visa applicant's manager, stating the visa applicant has been employed on a full-time basis since 16 January 2023;
- Witness statutory declaration from Alex Owusu-Afriyie, the sponsor's friend of 31 years, dated 26 April 2023, in support of the relationship;
- Witness statutory declaration from Fernando Verio Li, friend of both parties, dated 21 April 2023, in support of the relationship;
- AGL gas bills in joint names for the billing period of March to May 2019; September to November 2019; January to March 2020 at 3 Ascot Court, St Albans;
- AGL gas bills in joint names for the billing period of April to May 2021; May to July 2021; July to August 2021; September to October 2021; October 2021 to January 2022; January to March 2022; March to May 2022; July to August 2022; September to October 2022; October 2022 to January 2023; January to March 2023; March to May 2023 at Clacton Street, St Albans;
- Referral letter from a GP regarding the visa applicant's IVF treatment, dated 20 April 2023;
- Referral letter from a GP regarding the visa applicant's pain management for condition, dated 18 October 2022;
- Letter from a GP regarding the visa applicant's IVF treatment, dated 20 April 2023;
- Visa applicant's medical certificate dated 16 December 2022 from Sunshine Hospital VIC, stating she was admitted to the hospital on 15 December 2022, is suffering from a 'medical condition' and is unable to work from 15 December 2022 to 27 January 2023 inclusive;
- 4 tickets to Royal Melbourne Show events, purchased on 27 September 2022 by the sponsor;
- Phone call history for mobile phone number ending *1907;
- Photographs of both parties depicting their everyday life, at their wedding, with their son, and with friends and family;
- Visa applicant's qualification certificates for Certificate III in Individual Support – Ageing and Diploma of Early Childhood Education and Care, dated 3 September 2018 and 4 October 2017 respectively;
- RACV car insurance in joint names, dated 4 November 2022, stating the car is kept at Clacton Street, St Albans;
- Relationship statement from the sponsor, dated 24 April 2023;
- Relationship statement from the visa applicant, dated 24 April 2023;
- Property rent ledger history in joint names for the period of April 2021 to April 2023, at Clacton Street, St Albans;

- Flower delivery card addressed to the sponsor, sent by Parkville College;
 - Statement of claim and benefit for the visa applicant's medical service for fertility treatment on 7 December 2021;
 - Visa applicant's statement regarding their household responsibilities, undated;
 - Visa applicant's parents' affidavit, dated 18 October 2022, in support of the relationship;
 - Visa applicant's Hesta superannuation statement, dated 26 September 2022, listing the sponsor and the second applicant as 50% beneficiaries;
 - Visa applicant's tax return for financial years 2020, 2021, 2022, listing the sponsor as her spouse;
 - TPG internet bill in the visa applicant's name, and the sponsor's name at different times, at Clacton Street, St Albans for invoices dated between November 2021 to February 2023;
 - Sample WhatsApp chat history for the years 2018 to 2023.
12. On 28 April 2023, the applicants provided Migration agent's submissions dated 28 April 2023, addressing the various criteria of the visa.
13. On 2 May 2023, the applicant provided the following documents to the Tribunal in support of their application for review:
- Letter of support from Henry's classroom teacher, from St Albans East Primary School VIC 3021;
 - Letter from a GP dated 1 May 2023, regarding the sponsor's medical condition which prevents him from work.
14. On 4 May 2023, the applicant provided the following documents to the Tribunal in support of their application for review:
- Letter from priest from St Peter's Chanel Church and St Paul Parish dated 2 May 2023, in support of the relationship;
 - Amended information for paragraphs 11 and 24 of the statement in the submissions dated 28 April 2023;
 - Sponsor's tax return for financial year 2020, listing the visa applicant as his spouse.
15. On 5 May 2023, the applicant provided the following documents to the Tribunal in support of their application for review:
- Brief chronology of the matter, dated 5 May 2023;
 - List of evidence for documents provided within the past 7 days

Relationship Background

16. The evidence is that the parties met through a mutual friend (Mr Godwill who has provided a relationship statement in support) who introduced them after he rented a room to the visa applicant in Perth. They first met when the sponsor was visiting Perth in 2015 and they hit it off well. However, the relationship didn't go any further at that stage, mainly because of the physical distance between them. They kept in touch as friends over subsequent years. When the visa applicant's son arrived in Australia, she renewed her contact with the sponsor to tell him the good news. The applicant and the sponsor both said at hearing that this was a spark that reminded them of their feelings for each other and they started chatting more often and relatively soon after that, the sponsor invited the visa applicant (and the second applicant) to Melbourne to live with him. At hearing I asked the visa applicant about this move, with a young child to a new city and with a man she effectively barely knew,

suggesting it was a big step; and she responded that she was confident of the sponsor as a good and loving man, he was kind and she trusted that he would look after them. She had support from Mr Godwill too and other members of the community here in Melbourne. She gave evidence that he has been a good husband to her and a good father to her son and her faith in him has been justified. The sponsor said that he felt that the visa applicant was a good match for him because she has accepted him, is a hard worker and he loves her; and in his view they have a strong relationship which includes the three of them as a family.

Whether the parties are in a spouse or de facto relationship

17. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
18. 'Spouse' is defined in s 5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s 5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in reg 1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in reg 1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

19. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The evidence before me reflects that the visa applicant and sponsor married in St Albans on 17 March 2019. Evidence has been provided that the visa applicant was divorced from her husband in 2015 and that the sponsor was also divorced from his first wife in September 2002. Although the sponsor had been in subsequent relationships, he has provided statements that they were not registered relationships or marriages and that they have ended prior to the relationship here under consideration and marriage. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s 5F(2)(a).

Are the other requirements for a spouse relationship met?

Financial aspects of the relationship

20. The parties have a joint bank account but also maintain their own separate bank accounts. They gave evidence that they do not own any jointly owned property or other assets. During evidence it became clear that the financial resources of the applicant and sponsor are only partially pooled. Some of the visa applicant's income (her 'salary sacrificed' income) is deposited directly into their joint account and the balance into her personal account. The sponsor also has a personal account into which his pay is deposited. The parties gave evidence that they each frequently transfer money into the joint account from their respective personal accounts. The visa applicant said that they hope to save and build their own home in future. Consideration of the bank account statements and their evidence suggests that they have no joint loans or financial obligations, and family expenses such as rent, utilities, groceries and day to day expenses are met from the joint account and they each make

deposits into that account from their own separate accounts. However, their evidence at hearing reflected that they were each not aware of the balance of their partner's personal account and did not have access to the funds therein. The visa applicant was not aware that the sponsor had a balance of around \$80,000 in his personal account, or the amount of income he receives from work or his rental property. The sponsor was not aware of the balance of the visa applicant's personal account, or her income.

21. During the hearing I asked the visa applicant if she or her husband had any property and she replied that they did not. It was later disclosed, from the sponsor's evidence, that the sponsor does own a property in Epping and that it is mortgaged to the extent of around \$300,000 and provides rental income. He gave evidence that it was in his sole name because he has had that property since the end of his first marriage. He said it had previously been in the name of himself and his daughter from that marriage. When it was noted that the removal of his daughter from the title (which he said occurred about one year ago) would have been an opportunity for the addition of his wife to the title, the sponsor offered no explanation or response. When the property was later discussed with the visa applicant, she confirmed that she knew the sponsor owned a property, but was clearly unaware that it was now in her husband's sole name. She stated that she did not consider the property to be a 'joint' asset because she believes that her husband's older children had an interest in it, and she did not want to cause any problems between her husband and his other children. She said she would not be comfortable for that property to be transferred into her name because it might cause problems for her husband with his other children. She was unaware of the mortgage or of the level of income from the property.
22. The parties have provided copies of their taxation records which show that they each declare the other as their spouse. They have provided joint utilities bills and other banking statements addressed to them both at the addresses they have shared.
23. The visa applicant's lack of knowledge about her husband's financial affairs and his lack of knowledge of the balance of her bank account could be indicators that the parties are not pooling their income and resources as might be expected given their married status. The sponsor said that he transfers money into the joint account to meet their family needs 'as required' but could not explain how he came to know what was 'required.'
24. There is nothing inherently suspicious about couples keeping joint bank accounts and some of their income separate from any jointly pooled funds. However, where (as here) a couple has so little knowledge of each other's financial status, and exactly what it is that the other person earns and (for example) the ownership and income details of real estate, it does cause some concern. The regulations require a decision maker to consider joint ownership of assets, joint liabilities, the extent of pooling of financial resources, any legal obligations owed to the other party and any sharing of day-to-day household expenses to assist in assessing genuineness of the marriage relationship.
25. On balance, I consider that the financial aspects of the relationship in this case do not reflect a true pooling of joint resources, liabilities or assets. Nonetheless, I do accept that the visa applicant and sponsor discuss what joint and family expenses are needed and what contributions are required from each of them regularly to meet their day-to-day expenses and liabilities. I accept that they both access the joint account, and that there is some pooling of part of their respective income and resources. However, after carefully considering the financial aspect of the relationship, I find that it tends to suggest that the parties live with separate 'financial lives' rather than as a married couple, which could reflect a lack of commitment to the long-term relationship, particularly on the part of the sponsor.

Nature of the household

26. The parties gave evidence that they have lived together (with the second applicant) since the visa applicant and the second applicant arrived in Melbourne. They first lived in a rental property in Ascot Court, St Albans where the sponsor lived with one other woman, a cousin of the sponsor. Later, they rented their own place in Henry Street, St Albans and now live in a rental property in Clacton Street, St Albans. No one else shares the home. The rental agreements reflect them both as tenants.
27. The parties gave evidence that the sponsor's children sometimes visit on weekends. The visa applicant said that the relationship between the sponsor and his former partner is not good so he doesn't see his youngest son (now 4 years old) as much as he would like. The applicant said that she hasn't seen the sponsor's son for a while now, but her relationship is good with him.
28. The evidence given by the parties reflects that they share the household responsibilities, and that the sponsor has a close bond with the second applicant who calls him Daddy. He attends school and social activities involving the second applicant as his father. He is named on the second applicant's school records as his parent. Each of the applicant and sponsor and their witness gave evidence that usually, people who meet them assume that the second applicant is the biological son of the sponsor. This is true of people they meet through their church and generally in the community.
29. The evidence reflects that the care of the second applicant is shared between the visa applicant and sponsor, and that they manage their parenting responsibilities while balancing their work commitments. They share household tasks. Consideration of the nature of the household suggests that the visa applicants and the sponsor live together in a shared household as a family. I give this aspect some weight in this case.

Social aspects of the relationship

30. The parties have provided extensive supporting evidence which supports their claim that they are regarded throughout their family and community as a married couple. They have provided numerous statements from church friends, community friends and a letter from Father Renato Manubag, the Parish Priest at St. Paul Church, Glengala, all attesting to the fact that the visa applicant and sponsor are in an authentic marriage. These various statements support a finding that the visa applicant and sponsor present themselves as and are considered to be a loving and married couple to everyone within their social circle. They have provided photographs of them at various social and private events together as a couple and also with the second applicant. I accept the evidence provided.
31. A witness, Mr Afriye gave evidence that he is a close family friend and has in the past been able to assist with taking the second applicant to school if both parents were unavailable. He knows them well and he stated that theirs is a genuine and loving relationship and is considered a genuine marriage by everyone around them. I accept his evidence.
32. Consideration of the social aspects of the relationship strongly suggests that the visa applicant and the sponsor present themselves as and are considered to be a married couple to everyone within their family and community. I give this evidence significant weight in this case.

Nature of persons' commitment to each other

33. The visa applicant and sponsor have been married since 2019, and have lived as a family unit with the second applicant since then. The sponsor gave evidence that he relies on the visa applicant for emotional support and that he provides her and the second applicant with support in their everyday lives. He said that the visa applicant is kind and that they share the

same interests and values. He loves her and will always support her. The visa applicant also gave evidence that she loves and is committed to a shared life with the sponsor, and that she and the second applicant both rely on him for companionship and emotional support. When it was noted that it had been disclosed that she was not aware of a significant balance in his bank account, the visa applicant said that she trusted her husband. Both the visa applicant and the sponsor stated that theirs is a genuine, long term and committed relationship.

34. The visa applicant freely discussed the sponsor's (as yet undiagnosed) stomach symptoms and condition for which he has been receiving treatment and undergoing investigations this year. She noted that she has adjusted their meals to reduce spices as a consequence. The visa applicant previously had surgery for fibroids and the parties confirmed that the sponsor took time off work to support and care for her after her surgery. They each spoke of having a long-term future together, one which might include building or buying their own home.
35. Consideration of the evidence about the nature of their commitment to each other suggests that the visa applicant and sponsor do have a mutual commitment to a shared life together to the exclusion of all others. I give this some weight in this case.

Conclusion

36. I have carefully considered the information and evidence before me. After taking into consideration the concerns I have about the financial 'separation' of some financial resourced between the parties, I find nonetheless that the weight of evidence tends to support a finding that the visa applicant and sponsor are in a spousal relationship and have been since their marriage in 2019. I am satisfied that the first visa applicant and the sponsor share a mutual commitment to a shared life to the exclusion of others; that theirs is a genuine and continuing relationship; and that they live together.
37. On the basis of the above, the Tribunal is satisfied that the requirements of s 5F(2) are met and the visa applicant is in a married relationship with and is the spouse of the sponsor both at the time the visa application was made and at the time of this decision.
38. Therefore the applicant meets cl 820.211(2) and cl 820.221(1)(a).

The second applicant.

39. The second applicant is a child aged 10 and the son of the first applicant. He is dependent on his mother and the sponsor. I am satisfied that the second applicant is the dependent child of the first applicant, who has applied for a Partner visa. He was her dependent child at the time of application and continues to be so. Since her application is to be remitted for reconsideration, then the second applicant's application (which is dependent on that reconsideration) must also be remitted for reconsideration based on the Tribunal's directions that the first applicant meets the criteria in the relevant clauses of Schedule 2 to the Regulations.
40. Given the findings above, the appropriate course is to remit the applications for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

41. The Tribunal remits the applications for Partner (Temporary) (Class UK) visas, with the direction that the first named applicant meets the following criteria for a Subclass 820 (Partner) visa:
 - cl 820.211(2) of Schedule 2 to the Regulations; and

- cl 820.221(1)(a) of Schedule 2 to the Regulations.

Anne Grant
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).